

T. RICHARD IKARD

IBLA 82-581

Decided April 8, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. NM MC 59160.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim and evidence of assessment work or a notice of intention to hold the claim within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management. There also must be filed with the Bureau of Land Management, on or before Dec. 30 of each calendar year thereafter, a current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of delay in mail delivery, the consequences must be borne by the claimant.

APPEARANCES: T. Richard Ikard, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

T. Richard Ikard appeals the February 9, 1982, decision of the New Mexico State Office, Bureau of Land Management (BLM), which declared the unpatented

Plainview placer mining claim, NM MC 59160, 1/ abandoned and void because evidence of assessment work or a notice of intention to hold the claim had not been filed with BLM on or before December 30, 1981, as required by 43 CFR 3833.2-1, implementing section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant states the proof of labor was filed with the county recorder of Sierra County, New Mexico, on December 28, 1981, and that a photocopy of the recorded instrument was mailed to BLM. As the proof of labor was received by BLM on December 31, 1981, appellant believes there is a 10-day grace period to accommodate him.

[1] Section 314 of FLPMA, supra, and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4(a), require that evidence of assessment work be filed in the proper office of BLM on or before December 30 of each calendar year, under penalty of a conclusive presumption that the claim has been abandoned if the required document is not timely or properly filed for recordation with BLM.

Despite appellant's assumption that the document was timely mailed, the regulations define "file" to mean "being received and date-stamped by the proper BLM office," 43 CFR 3833.1-2(a). Thus, even assuming timely mailing of the document, and that an error by the Postal Service prevented timely delivery to the BLM office, that fact would not excuse appellant's failure to comply with the cited statute and regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, supra; James E. Yates, supra; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Furthermore, there is no provision for any grace period to accommodate late filings of mandatory recordations of mining claims under FLPMA. 2/

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1/ The Plainview placer mining claim was located Sept. 1, 1965. Copy of the notice of location and a proof of labor was filed with BLM July 26, 1979. The 1980 proof of labor was received by BLM Sept. 4, 1980.

2/ However, appellant should be aware that it is not necessary to wait until he receives the recorded copy of the proof of labor back from the county recorder before he files a copy with BLM. The only requirement is that the two copies be the same. 43 CFR 3833.2-2(a).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Edward W. Stuebing  
Administrative Judge

